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**IN THE
COURT OF APPEALS OF INDIANA**

JIM D. VORIS,

Appellant-Defendant,

VS.

STATE OF INDIANA,

Appellee-Plaintiff.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

No. 34A02-0602-CR-123

APPEAL FROM THE HOWARD CIRCUIT COURT
The Honorable Lynn Murray, Judge
Cause No. 34C01-0509-FB-287

August 23, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

SHARPNACK, Judge

Jim D. Voris appeals his sentence for sexual misconduct with a minor as a class C felony.¹ Voris raises one issue, which we restate as whether the sentence is inappropriate in light of the nature of the offense and character of the offender. We affirm.

The relevant facts follow. During August 2005, Voris, a seventy three-year-old resident of Ft. Myers, Florida, was visiting his sister Judy Pemberton in Howard County, Indiana. During this same time, Pemberton's granddaughter, M.S., who is fifteen years of age, was also staying at Pemberton's home for the week. During the early morning of August 31, 2005, Voris entered the bedroom in which his grandniece, M.S., was asleep to "tell her goodbye as he was leaving" to return to Florida. Appellant's Appendix at 5. Then, while M.S. remained asleep, Voris began to kiss and fondle her. Voris continued to fondle the young girl and then proceeded to "pull[] down her sweat pants and her panties." Id. Then, Voris performed cunnilingus and digital penetration on M.S. When M.S. awoke, she saw that her sweatpants were down around her ankles and that her granduncle, Voris, was in the act of performing cunnilingus. M.S. initially remained silent, and subsequently, moved away from Voris, at which point he ceased contact and left the room. Later that morning, the victim's mother reported the crime to the police and [M.S.] was able to give her account of the incident.

Following the incident, Voris returned to Florida but was soon contacted by a police detective from Howard County Indiana requesting him to return to Indiana to talk to authorities. Voris shortly thereafter made the trip back up to Indiana and met with a

¹ Ind. Code § 35-42-4-9 (a) (2004).

detective. During a police interview on September 13, 2005, Voris made a full confession of what occurred during the incident. Voris confessed that he believed the incident would be M.S.'s fantasy stating that he thought, "this is what she wanted." Appellant's Appendix at 5. Voris further stated he was regretful and felt terrible for his actions. Voris' retelling of the incident matched the account given by M.S. on August 31, 2005.

On September 15, 2005, the State charged Voris with: (1) Count I, criminal deviate conduct, a class B Felony;² (2) Count II, sexual misconduct with a minor, a class C Felony. Pursuant to a plea bargain agreement filed on October, 19 2005, the defendant pled guilty to sexual misconduct with a minor, a Class C felony. The plea agreement stated, "[S]entencing shall be determined by the court." Appellant's Appendix at 24; Transcript at 13. In exchange for the defendant's guilty plea to Count II, the State agreed to dismiss the remaining charge for criminal deviate conduct, a class B Felony. The trial court accepted Voris's guilty plea, and the State dismissed the remaining charge.

A sentencing hearing was held on November 30, 2005, in which Pemberton testified that M.S. had a history of being molested by her older brother and was just beginning her recovery from those episodes. In her victim impact letter, M.S. wrote to the trial court judge explaining that she had prior problems of abuse and that "she was starting to get over those things" and that "she had been progressing well until this happened." Sentencing Hearing Transcript at 30.

The trial court found the following aggravating circumstances: (1) Voris took advantage of his grandniece, violating a position of trust; (2) Voris was aware of the fact that victim had some problems and took advantage of her in this troubled state; and (3) the incident has affected the victim “in a very negative way, very badly, and will for a very long time.” Sentencing Hearing Transcript at 47. The trial court found the following mitigating circumstances: (1) Voris has no prior criminal history; (2) Voris pleaded guilty early on in the case “spar[ing] the victim of the ordeal of having to go through trial.” Id. at 46. The trial court concluded “there is [sic] not sufficient aggravators in which to aggravate this sentence beyond the 4 year advisory sentence.” Id. at 47. The trial court sentenced Voris to the advisory four-year sentence for a class C felony and ordered him to pay restitution to the victim in the amount of \$1,200.

The sole issue for this Court is whether Voris’ sentence is inappropriate in light of the offense and character of the offender. Ind. Appellate Rule 7(B) provides that we “may revise a sentence authorized by statute if, after due consideration of the trial court’s decision, [we find] the sentence is inappropriate in light of the nature of the offense and the character of the offender.” Our review under Appellate Rule 7(B) is extremely deferential to the trial court as to whether the sentence is inappropriate. Pennington v. State, 821, N.E.2d 899, 903 (Ind. Ct. App. 2005).

The trial court sentenced Voris to four years in the Indiana Department of Correction, the advisory sentence for a class C felony. Voris urges this Court to revise

² Ind. Code § 35-42-4-2 (a)(2) (2004).

his sentence, or in the alternative remand to the trial court for resentencing on the basis that the trial court did not give enough weight to the mitigating factors,³ and therefore the sentence was inappropriate.

We first consider the nature of the offense. Voris took advantage of his fifteen-year-old grandniece while she was asleep. In doing so, Voris severely abused his position of trust and his family relationship with his grandniece. Though Voris claims to have not been aware of M.S.'s history of molestation by other family members in the past, he was at the very least aware that M.S. had "some problems" she was dealing with. Sentencing Hearing Transcript at 29, 36. Due to M.S.'s prior incidents of abuse from other family members, she was affected "in a very negative way" and this incident served as a significant setback to her recovery from those prior incidents. Id. at 30, 47. Additionally, M.S. is currently receiving counseling and has already incurred significant expenses in light of her treatment, for which Voris has been ordered to pay for through restitution.

In regard to the character of the offender, Voris has no prior criminal history or convictions and has remained in good standing with the law throughout the seventy-three years of his life. Furthermore, shortly following the incident, Voris expressed regret and shame for his actions, which is evident in his early cooperation with authorities in making a confession to the charges, his plea bargain agreement with the State, and his statements

³ Ind. Code § 35-38-1-7.1(d) provides that a trial court may impose any sentence within the proper statutory range regardless of the presence or absence of aggravating or mitigating circumstances.

of regret and remorse directed toward the victim during the sentencing hearing. When asked if there was anything he would like to say regarding the incident, Voris responded, “Well, just that I’m sorry that anything ever happened . . . and to ask M.S. if I offended her would she please forgive me.” Id. at 36.

On the other hand, Voris not only took advantage of a young girl whom he knew to be vulnerable and experiencing some problems in her life, but also a family member who had at least some expectation of trust. Voris exploited this position of trust and the victim’s vulnerable state for his own ends. Lastly, Voris made comments to investigators that he believed that the incident would be M.S.’s fantasy and that “this is what she wanted.” Appellant’s Appendix at 5. These comments serve to further illustrate Voris’s poor character. After due consideration of the trial court’s decision, we conclude, in light of the nature of the offense and character of the offender, the advisory sentence of four years was not inappropriate. See, e.g., Kien v. State, 782 N.E.2d 398, 415-416 (Ind. Ct. App. 2003) (holding that a defendant’s enhanced sentence for child molestation was not inappropriate, even though the defendant had no prior criminal history and was well regarded in his community), reh’g denied, trans. denied.

For the foregoing reasons, we affirm Voris’s sentence for sexual misconduct with a minor as a class C felony.

Affirmed.

NAJAM, J. and ROBB, J. concur